

Devot
6

COPYRIGHT ROYALTY TRIBUNAL

----- X

In the Matter of: :
CABLE ROYALTY DISTRIBUTION : CRT Docket 83-1
1982 - Phase I: :

----- X

(This volume contains pages 1086 through 1158)

2000 L Street, Northwest
Room 500
Washington, D. C.

Friday, August 3, 1984

The hearing in the above-entitled matter commenced
at 10:00 a.m., pursuant to adjournment.

BEFORE:

THOMAS BRENNAN	Chairman
DOUGLAS E. COULTER	Commissioner
EDDIE RAY	Commissioner
MARIO F. AGUERO	Commissioner
MARINANNE MELE HALL	Commissioner

1 APPEARANCES:

2 On behalf of Devotional Claimants:

3 ANN FORD, ESQ.
4 Suite 800
5 1255 23rd Street, Northwest
6 Washington, D. C. 20037

7 CLIFFORD M. HARRINGTON, ESQ.
8 Fisher, Wayland, Cooper & Leader
9 1100 Connecticut Avenue, Northwest
10 Washington, D. C. 20036

11 On behalf of MPAA:

12 DENNIS LANE, ESQ.
13 Wilner & Scheiner
14 Suite 300, The Thurman Arnold Building
15 1200 New Hampshire Avenue, Northwest
16 Washington, D. C. 20036

17 On behalf of BMI:

18 DAVID FURTH, ESQ.
19 Peabody, Lambert & Meyers
20 1150 Connecticut Avenue, Northwest
21 Washington, D. C. 20036

22 On behalf of the Old Time Gospel Hour:

23 JOHN H. MIDLEN, ESQ.
24 Suite 1200
25 1100 Fifteenth Street, Northwest
Washington, D. C. 20005

26 On behalf of NAB:

27 DAVID H. SOLOMON, ESQ.
28 Crowell & Moring
29 1100 Connecticut Avenue, Northwest
30 Washington, D. C. 20036

31 On behalf of the Joint Sports Interests:

32 ROBERT ALAN GARRETT, ESQ.
33 Arnold & Porter
34 1200 New Hampshire Avenue, Northwest
35 Washington, D. C. 20036

C O N T E N T S

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
----------------	---------------	--------------	-----------------

ALLEN R. COOPER	- -	- -	1142
-----------------	-----	-----	------

By Mr. Harrington	- -	1091	- -
-------------------	-----	------	-----

WALTER H. RICHARDSON	1147	- -	- -
----------------------	------	-----	-----

By Mr. Lane	- -	1150	- -
-------------	-----	------	-----

<u>EXHIBITS</u>		<u>IDENT.</u>	<u>RECVD.</u>
-----------------	--	---------------	---------------

Devotional No. 23	CBN List of Advertisers	1089	1089
-------------------	-------------------------	------	------

Devotional No. 24	Excerpts Spec. Research Rept.	1095	1142
-------------------	-------------------------------	------	------

Settling Parties Noss. 27 through 30		- -	1090
--------------------------------------	--	-----	------

Tribunal No. 1	PTL Inspirational Network	1148	1157
----------------	---------------------------	------	------

Tribunal No. 2	Park Place Adv. Agency	1148	1157
----------------	------------------------	------	------

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1330 VERMONT AVENUE, NW

WASHINGTON, D.C. 20005

P R O C E E D I N G S

(10:00 a.m.)

CHAIRMAN BRENNAN: The hearing will resume.

I will call upon counsel for Devotional Claimants to discuss some pending matters.

MS. FORD: Yes, yesterday the Devotional Claimants placed into the record a list of national advertisers on the ad-support and CBN satellite channel. And after the hearing Commissioner Aguero had asked for a similar listing of advertisers on the SIN channel. So, I would like to place into the record Devotional Claimants Exhibit 23, which reflects this list.

CHAIRMAN BRENNAN: Without objection, it will be received.

(Whereupon, the document was marked for identification as Devotional Claimants' Exhibit No. 23 and received)

CHAIRMAN BRENNAN: Would counsel now respond to the other pending matter, the exhibits that Mr. Bechtel presented last week?

MR. HARRINGTON: Mr. Chairman, I am prepared to respond, or if you feel Ms. Ford is more appropriate, she can.

CHAIRMAN BRENNAN: It doesn't matter, Mr. Harrington.

MR. HARRINGTON: Thank you.

1 We have no specific objection to the exhibits,
2 based on your prior rulings allowing cross-examination of
3 Mr. Clark relating to CBN's overall ownership structure.
4 However, I must state our continuing objection to this
5 entire line of cross-examination and documentary evidence
6 on the grounds that it is totally irrelevant. We have not
7 been allowed to go into the question of the ownership of
8 the various syndicated programming and movie producers,
9 nor have we gone into the question of what is the ownership
10 structure of the various companies that own the copyright
11 in PBS's programming, for example.

12 I think under the circumstances it is very unfair
13 for one party to be picked out for special treatment. But
14 we have no objection, if you overrule the specific -- the
15 general objection to the line of cross-examination.

16 CHAIRMAN BRENNAN: The Chair will be guided by
17 the previous vote of the Tribunal. We note your exception,
18 and the exhibits are received into evidence.

19 (Whereupon, Settling Parties Exhibits
20 27 through 30 were received in evidence)

21 MR. MIDLEN: Mr. Chairman, I am planning on
22 excusing myself and meeting with Mr. Richardson, while Mr.
23 Cooper is being cross-examined. We will be in one of two
24 places, if we are not already back in the hearing room;
25 that would be either the reading room at the end of the

1 corridor in the Postal Rate Commission, or the witness room
2 down on the second floor of the Federal Communications
3 Commission.

4 CHAIRMAN BRENNAN: We will find you.

5 MR. MIDLEN: I am sure.

6 CHAIRMAN BRENNAN: Now, Mr. Cooper, would you
7 once again return to the stand?

8 Whereupon,

9 ALLEN R. COOPER

10 was called as a witness and, having been previously sworn,
11 was examined and testified as follows:

12 CHAIRMAN BRENNAN: Mr. Lane, before I turn Mr.
13 Cooper over to counsel for Devotional Claimants, do you
14 wish to address any preliminary questions?

15 MR. LANE: No, sir.

16 MR. HARRINGTON: For the record, I am Clifford
17 Harrington, I appear today on behalf of the Devotional
18 Claimants.

19 CROSS-EXAMINATION

20 BY MR. HARRINGTON:

21 Q Mr. Cooper, you have provided the Devotional
22 Claimants now with all five volumes, I believe, of a
23 document entitled Nielsen Home Video Index, which I am
24 holding Volume 1 in my hand. Was this the Special Nielsen
25 Research Report which was relied on in part by the Settling

1 Parties in their exhibits?

2 A Yes, Mr. Harrington, I think you should place the
3 whole title of the work into the record, it is Nielsen
4 Home Video Index, Viewing of Non-Network Programs by Distant
5 Cable Households.

6 Q And you have provided me with all five volumes
7 now, and there are no other volumes of that study in
8 existence, am I correct?

9 A There are five volumes published by Nielsen.

10 Q And the five volumes you provided to me are the
11 five volumes of the study?

12 A Yes, sir.

13 Q Now, I call your attention to the Settling
14 Parties case in chief, do you have a copy of that, Mr.
15 Cooper?

16 CHAIRMAN BRENNAN: Mr. Harrington, could you give
17 us just a second please? Off the record.

18 (Off the record)

19 BY MR. HARRINGTON:

20 Q I am not going to ask you a lot of detailed
21 questions about this, but I just want to call your attention
22 certain parts. First, if you will turn to Exhibit 1,
23 please.

24 A (Perusing documents)

25 Q Page one, entitled Christian Broadcast Network,

1 1982, Nielsen ROSP Devotional Programs. That was not based
2 on this study, was it?

3 A No, sir.

4 Q In fact, it is based on the ROSP study which is
5 a study of the over-the-air viewing patterns, is that not
6 correct?

7 A That is correct. The audiences of the stations,
8 both with respect to their over-the-air reception and
9 reception of the over-the-air signal by cable.

10 Q I understand, but it does not focus entirely on
11 distant signal carriage by cable systems?

12 A Not at all.

13 Q And the same would be true of the next page --
14 well, I had better identify the first page, which in
15 addition to saying Christian Broadcasting Network, 1982
16 Nielsen ROSP Devotional Programs, has 700 Club on it;
17 the next one is In Touch; the next one is the Lesson;
18 Another Life; USAM and for PTL, Jim Bakker, and for Old
19 Time Gospel Hour -- none of those were based on this
20 special Nielsen study, they were based on the ROSP book,
21 is that correct?

22 A They are all identified as the ROSP being the
23 source.

24 Q But the next page and the last page of Exhibit 1,
25 Analysis of CBN-Owned Station Programming, source Nielsen

1 Study, Total Quarter Hours, that was based on your special
2 study?

3 A It was based upon the special study of 1981 and
4 1982.

5 Q Thank you. And the only other exhibit that I
6 have been able to identify within your case, as originally
7 exchanged, is Exhibit No. 5, entitled Share of Time and
8 Distant Signal Viewership in Cable Households of Devotional
9 Programs. Is that based on the Special Nielsen Study?

10 A It is based upon the Special Nielsen studies for
11 the years '79, '80, '81 and '82.

12 Q Does the Special Nielsen Study include all
13 television stations that were carried on a distant signal
14 basis?

15 A No, it includes only the same selected by the
16 MPAA.

17 Q So, the MPAA selected sample?

18 A The MPAA selected the sample and so stated in
19 the report.

20 Q Nielsen didn't select the sample?

21 A If MPAA selected it, then Nielsen did not.

22 Q I just want to get it clear, Mr. Cooper. What
23 was the basis for selecting stations within the sample?

24 A The basis is set forth in the Nielsen document,
25 was the number of subscribers of cable systems transmitting,

1 retransmitting each station's signal on a distant basis.
2 The sample is limited to Form 3 cable systems who carried
3 each signal on the full-time basis during 1982, based upon
4 the statements of accounts filed by those cable systems.

5 Q Just a second and I will put the methodology in,
6 and it might help us all.

7 MR. HARRINGTON: I ask that the document entitled
8 Special Research Report, which consists of a cover sheet
9 and 10 pages of documents which are excerpts from Volume 1
10 of the study supplied to us, be identified as Devotional
11 Claimants' Exhibit No. 24.

12 (Whereupon, the document was marked
13 for identification as Devotional
Claimants' Exhibit No. 24)

14 THE WITNESS: Mr. Harrington, I don't want to
15 interfere with your presentation, but I believe that the
16 exhibit introduced by Ms. Ford was 23.

17 MR. HARRINGTON: I asked this be identified as
18 24, I believe.

19 BY MR. HARRINGTON:

20 Q Would you turn to the third page of the document
21 which I have handed you, Mr. Cooper? It says Study Method-
22 ology, that accurately states the methodology that was
23 used in selecting the samples, is that correct?

24 A Yes, sir.

25 Q The sample didn't include non-commercial

1 educational stations, did it, Mr. Cooper?

2 A It did not, it clearly says on this page the
3 sample consisted only of US commercial TV stations.

4 Q So, it didn't include Canadian stations, either?

5 A They are not US commercial TV stations, Mr.
6 Harrington.

7 Q Were Canadian stations carried on American cable
8 systems for which distant signal license fees were paid
9 by cable systems?

10 A Yes, they were.

11 Q And were any significantly carried by American
12 cable systems?

13 A I think the answer -- of course "significantly"
14 is a relative matter. I think the answer is yes, there was
15 significant carriage of some Canadian stations.

16 Q Now, we have received a study by Larson Associates,
17 and I believe they have done some studies for you, and you
18 may well have a similar printout in your hands at your
19 office. I looked through it last night and I saw at least
20 six Canadian stations were carried by 10 or more Form 3
21 cable systems, were you aware of that?

22 A I should say I am aware of that, yes.

23 Q And a number of others are carried by less than
24 10 Form 3 cable systems?

25 A Yes.

1 Q Did you include in your sample base any stations
2 that were carried only by Form 2, or Form 1 cable systems?

3 A We did not.

4 Q Did you include in your data base stations
5 carried by systems having an aggregate of less than 200,000
6 subscribers on Form 3 cable systems during 1982, as a
7 distant signal basis?

8 A We did not include any that were carried by
9 fewer than 200,000 -- by systems with fewer than 200,000
10 subscribers in 1982.

11 Q Computing the 200,000 subscribers, did you only
12 count Form 3 systems?

13 A Yes, sir, and it is clearly set forth in the
14 methodology dealing only with Form 3 full-time.

15 Q I understood from the methodology that they had
16 to be carried by at least one Form 3 system. I wasn't
17 sure from the Nielsen explanation and the methodology if
18 the 200,000 subs had to come from Form 3 systems, that's
19 why I asked the question.

20 And it excluded STV stations, as it so states,
21 is that right?

22 A That is correct.

23 Q And in 1982, did STV stations carry non-scrambled
24 programming as well, in some cases?

25 A It carried a few non-scrambled, programmed

1 usually in fringe time periods, but their programming was
2 inconsequential to the station's operation.

3 Q I call your attention, Mr. Cooper, to the on-TV
4 operation in Los Angeles, which during 1982 carried a
5 substantial amount of Spanish language programming between
6 the hours of 6:00 a.m. and 7:00 p.m., are you aware of
7 that?

8 A I am aware that that station, probably, in
9 addition to Spanish programming, also carried other ethnic
10 programming.

11 Q You believe that to be the case?

12 A Yes, sir.

13 Q What is the basis for that belief?

14 A The basis for that belief is an examination of
15 TV Guide schedules of these stations.

16 Q For 1982?

17 A That is my understanding, Mr. Harrington.

18 Q I am only surprised of that because during 1982
19 our firm represented that station, and I am aware of no
20 other foreign language or ethnic programming, other than
21 Spanish language programming that was broadcast on that
22 station.

23 A That is quite possibly true, Mr. Harrington.

24 Q So, you came up with a sample base according to
25 the Nielsen analysis of 89 stations, is that correct?

1 A That is correct.

2 Q How many stations were there in operation in the
3 United States in 1982?

4 A Including commercial stations?

5 Q Commercial and non-commercial?

6 A Probably, approximately 1600.

7 Q 1600. So, the programming could have appeared
8 on all 1600 of the other stations, and might not have made
9 your sample, is that not correct?

10 A It could have appeared, but it would be of no
11 consequence in the deliberations of this Tribunal, which is
12 concerned only with distant viewing.

13 Q And how many stations were carried on a distant
14 signal basis by Form 1, Form 2 and Form 3 cable systems
15 in 1982?

16 A Would you repeat the question, please?

17 Q How many television stations licensed in the
18 United States, commercial and non-commercial, was carried
19 by Form 1, Form 2 and Form 3 cable systems in 1982?

20 A You are saying Form 1, and/or Form 2 and/or Form
21 3?

22 Q Yes.

23 A Oh, I would estimate that the number could be
24 as many as 6-700.

25 Q Yet we are only dealing with a sample of 89, that

1 excludes non-commercial stations, it excludes Canadian
2 stations, it excludes STV stations -- it excludes stations
3 that aren't carried by very large cable systems, isn't
4 that right?

5 A It would exclude stations that are not carried
6 to any significant degree as distant signals by cable
7 systems.

8 Q That is a judgment decision, isn't it, Mr.
9 Cooper?

10 A No, it is not a judgment decision at all, it is
11 a statistical decision.

12 Q But you made that statistical decision, not the
13 Congress, or not the Tribunal?

14 A That is correct.

15 Q And, in fact, there is nothing in the Act, or
16 in the rules of this Tribunal that say compensation is not
17 due for programming carried on television stations that
18 are licensed in Canada, or happen to be STV stations, or
19 are non-commercial stations, or don't happen to be carried
20 by cable systems having an aggregate of 200,000 subscribers,
21 or don't happen to be carried on Form 3 systems on a
22 distant signal basis, but do happen to be carried by Form
23 1, or Form 2 systems?

24 A The Tribunal has segregated the non-commercial
25 television stations in the United States as a separate

1 Phase I claimant, and has also separated Canadian broad-
2 casters as a separate Phase I claimant.

3 We are dealing here, in terms of this study, it
4 is intended primarily for programming suppliers. And their
5 case is separate and apart from the case of public broad-
6 casting, and separate and apart from the case of Canadian
7 broadcasters.

8 Q But you didn't answer my question, did you, Mr.
9 Cooper? I asked you does the Act, or this Tribunal say
10 that people who own program rights on those kinds of
11 stations that were excluded from your sample are not
12 entitled to compensation?

13 A I didn't say so at all. My answer is that those
14 rights of those claimants are to be addressed in the
15 Phase I, in the claims of Public Broadcasting, and in the
16 claim of Canadian broadcasters.

17 Q Well, let's go back again, this study does not
18 in anyway purport to be a representational sampling of
19 the universe of distant signal viewing, is that correct?

20 A The representation that we have made to this
21 Tribunal is that the sample of 89 stations that comprise
22 the group that was studied in this special study encompass
23 over 90 percent of the total subscribers of all cable
24 systems viewing -- receiving or retransmitting distant
25 signals of US commercial stations.

1 Q Ninety percent of the subscribers? I don't quite
2 understand how you can compute that, Mr. Cooper, if you
3 don't have the rest of them in the study, I don't understand.
4 Explain that.

5 A They are in the study, to the extent that they
6 were part of the original sample, which consisted of all
7 US commercial television stations. We were then able,
8 quite readily, from the data that you have probably before
9 you, to determine the number of subscribers of the stations
10 that constituted the sample, versus the totality of the
11 number of subscribers receiving any distant signal.

12 Q So, what you are telling me is that you decided
13 to ignore stations which were not among the very top
14 number, having cable subscribers on a distant signal basis?

15 A Exactly. It was not cost effective to include
16 them, nor would it provide any significant additional
17 data with respect to the distribution of cable copyright
18 royalties among program syndicators.

19 Q Who made that decision? Did Nielsen -- the
20 analysts make that decision?

21 A I think it is very clear from the report that
22 you have in front of you, that the decision was made by
23 MPAA.

24 Q So, you think that it doesn't offer any useful
25 evidence?

1 A Absolutely.

2 Q But you didn't try -- why didn't you ask Nielsen
3 to do a random sampling of stations, Mr. Cooper?

4 A Because I knew that a random sampling of stations
5 would be absolutely cost-ineffective and would reduce the
6 significance of the information that would be obtained.

7 Q Now, you are talking about subscriber levels, but
8 you are also inherently talking about the amount of funds
9 that were paid in by those cable systems for carriage,
10 aren't you? So, aren't we back to a study that was once
11 again based, in large part, on fee generation data?

12 A Absolutely not. The fee generation controversy
13 that existed in the 1979 proceeding, when the sample was
14 based on fee generator approach, was criticized by the
15 Tribunal to the extent that the fee generated approach
16 ruled against the inclusion of network affiliates in the
17 sample. By counting subscribers, regardless of the
18 differential between the fee paid by cable systems for the
19 retransmission of a network signal, versus the fee paid
20 for retransmission of an independent station's signal, we
21 have not used fee generated one whit in determining the
22 sample composition.

23 Q But you have used a new criteria, and that is
24 subscriber levels, which again is not in the Act anywhere,
25 is it? Can you point to me in the Copyright Act where it

1 says anything about a cut-off of copyright licensing fees
2 because of low subscriber levels?

3 A No. We are presenting the best evidence that
4 we feel that the Tribunal should have in making its judg-
5 ments. And the decision with respect to what evidence
6 to present is our decision.

7 Q And the decision of the Tribunal as to whether
8 to credit this report is its decision, isn't it?

9 A Completely so. And to the extent that the
10 Tribunal has in two previous rulings referred to our
11 study as the most important item of evidence presented in
12 the proceedings, and to have probative value, has encouraged
13 us to continue these studies now for the fourth year.

14 Q That's very nice, Mr. Cooper. Does Nielsen stand
15 by the methodology that was used in here as giving an
16 accurate portrayal of the distant signal carriage of
17 programming in the United States?

18 A Yes, it is total portrayal with respect to the
19 significance of this study as set forth in this report,
20 and indicates the cautions which they present to anyone
21 having access to the report.

22 Q Let's turn to page 838 of the report, in the
23 documents you have there, Mr. Cooper.

24 A (Perusing documents)

25 Q Paragraph A, it says specifically, "Estimates

1 reported herein do not apply to other stations failing to
2 meet the stated criteria".

3 So, Nielsen itself says that this is not an
4 accurate representation of overall viewing, is that not
5 correct?

6 A That is not correct. There is not one word of
7 accuracy in the statement that you read, or that Nielsen
8 read. What the statement says is an accurate -- to use
9 your term -- an accurate statement of the sampling pro-
10 cedure. It does not have anything to do with the accuracy
11 of the study, or the significance of the results.

12 Q What does that sentence mean then, Mr. Cooper?
13 I don't quite understand it, why does Nielsen feel com-
14 pelled to say "Estimates reported herein do not apply to
15 other stations failing to meet the stated criteria"?
16 Isn't that Nielsen saying, if WXNE is not in the list,
17 not in the sample, we are not vouching as to whether this
18 is a representational study of the viewing on WXNE, and
19 therefore, on the overall impact on this Tribunal's
20 decision?

21 A Nowhere have we made any claim that this is
22 representational of the viewing of stations which are not
23 included in this sample. What we have been saying throughout
24 all of these proceedings, is this represents the viewing
25 on the 89 stations in 1981 and 1982, that were carried

1 by the largest number of cable systems on the full-time
2 basis.

3 Q Now, Mr. Cooper, I have in front of me this
4 Larson Report, I call your attention to the printout on the
5 station-by-station print for WYAH, and this is for the
6 second half of 1982. And it shows that that station was
7 carried by four Form 3 cable systems with 101,142 sub-
8 scribers, is that an accurate statement of what that says?

9 A (Perusing document) It is an accurate statement
10 of what that says.

11 Q But WYAH does not appear in the Nielsen study.

12 A Because it did not fulfill the two criteria
13 required for inclusion in this sample.

14 Q Which are?

15 A The first criterion was that the total number of
16 subscribers of the Form 3 systems on the full-time basis
17 during accounting periods one and two of 1982 would total
18 200,000 or more, of which a minimum of 100,000 would be in
19 the second accounting period.

20 Q So, since we have seen the second accounting
21 period is over 100,000; I assume the reason it was elimin-
22 ated was because in the first half it fell somewhat below
23 100,000?

24 A That is correct. That would be my assumption,
25 and I think it would be a very fair assumption for you to

1 take.

2 Q So even though it might have come very close to
3 this arbitrary figure that you plucked out of the air, it
4 is excluded from the sample?

5 A It is not a figure plucked out of the air.

6 Q Is it an industry accepted figure?

7 A I don't know what that would mean. It is a figure
8 that we decided upon unilaterally, based upon significance
9 and cost factors.

10 Q Who, particularly, made that decision at MPAA?

11 A I will take responsibility for that decision.

12 Q You made the decision?

13 A Yes, sir.

14 Q Was it based on any statistical analysis that
15 you had done?

16 A It was based upon a very close knowledge of the
17 significance of data that we had developed over the years,
18 and also, with clear knowledge of the cost factors involved
19 in adding each station to the sample.

20 Q Mr. Cooper, do you have any advanced degrees in
21 statistics?

22 A I have graduate work in statistics. I have
23 worked in statistics, including sampling, probability
24 levels, and the rest of that discipline during most of
25 the 40-odd years that I have been involved in advertising

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1330 VERMONT AVENUE, NW

WASHINGTON, D.C. 20005

1 research and broadcasting.

2 Q That raises an interesting question, what is the
3 purpose of the Nielsen overall studies? Why does Nielsen
4 poll householders as to their viewing habits?

5 A Nielsen's purpose in doing that is to market
6 a service that provides information to broadcasters and
7 to advertisers in making their multi-million dollar decisions
8 with respect to the placement of advertising revenue, and
9 in the case of broadcasters, in terms of the selection of
10 their programming.

11 Q So, a very major portion of Nielsen's intent
12 in its studies is to be of use to advertisers, right?

13 A A very major part of it, yes, indeed.

14 Q And yet advertising really has nothing to do
15 with this proceeding, does it?

16 A It has to do with this proceeding to a substantial
17 degree, and that is that the choice of syndicated program-
18 ming, including series and movies that are broadcast by
19 stations and retransmitted by cable systems, is based upon
20 the advertising revenues that those stations receive.

21 Q Do cable operators choose the stations that they
22 are going to carry because of the particular advertisers
23 that are going to appear on that station?

24 A No, not at all.

25 Q I didn't think so.

1 A But they do on the basis of the programming that
2 those advertisers are supporting on the stations that they
3 retransmit.

4 Q Do you have any proof of that, Mr. Cooper?

5 A I think this is an issue without question, with-
6 out being challenged --

7 Q But you have no documentary proof with you today
8 of that statement, do you?

9 A I have actually no question in my mind, Mr.
10 Harrington, that the reasons that stations carry programs,
11 commercial stations carry programs in the United States is
12 for the financial benefits that the stations receive, and
13 the financial benefits the stations receive is either from
14 advertising revenue, or in the unique case of devotional
15 broadcasters, from the payment by those broadcasters of
16 hourly rates for the carriage of those programs.

17 Q But, Mr. Cooper, now, if your theory is right,
18 wouldn't cable systems carry stations that had the very
19 highest local ratings, to a greater degree, than stations
20 with lower ratings?

21 A The very highest local ratings?

22 Q Yes.

23 A I don't understand what you are talking about.

24 Q Well, you just got through telling me that the
25 decision was based on the popularity of the programming.

1 A Indeed. We are talking about the very highest
2 local ratings for local programs?

3 Q No, I am talking about the ratings within a
4 DMA. What other ratings are there regularly available from
5 the stations?

6 A Pardon me? Oh, there are ratings for local
7 programs; there are ratings for syndicated programs; there
8 are ratings for other kinds of programs.

9 Q I understand that. But you are talking about
10 the overall ratings for a station, aren't you?

11 A I refer to the programming that produces those
12 ratings.

13 Q Well, I don't think we are connecting on this,
14 Mr. Cooper. Your theory is that stations that generally
15 have higher ratings will have wider carriage, is that not
16 correct?

17 A No, I didn't say that.

18 Q Well, then why did you tell me a second ago that
19 the ratings of stations influenced, to the greatest degree
20 possible, cable system management decisions to carry those
21 stations?

22 A I didn't say the ratings, I said the programming
23 of those stations is what makes those decisions. The
24 basic decisions of the cable systems to retransmit a
25 particular station.

1 Q So, ratings points are not as relevant in that
2 decision? They are not relevant at all?

3 A Rating points are reflective of the popularity
4 of the programs.

5 Q They are? Is WTBS the highest rated station
6 in the Atlanta market?

7 A It is not.

8 Q Is WGN the highest rated station in the Chicago
9 market?

10 A It is not.

11 Q Is WPIX the highest rated station in the New
12 York market?

13 A It is not. You asked about WPIX --

14 Q Mr. Cooper, I did not, I ask you a question that
15 could be answered yes, or no. Please don't volunteer, if
16 the question can be answered yes or no. Mr. Lane can ask
17 you all the questions he wants to.

18 A Fine.

19 Q Let's go back to the methodology of your study --
20 of the Nielsen Study, Mr. Cooper. And turn to page A-7.
21 Does that accurately describe the methodology that was
22 used in determining how to classify cable carriage as
23 distant or as local?

24 A Yes, sir.

25 Q It was done on a county-by-county basis, is that

1 correct?

2 A The analysis as to whether a signal was distant
3 or local was decided on a county-by-county basis.

4 Q Do the FCC rules provide that those decisions
5 be made on a county-by-county basis?

6 A The FCC rules in part do.

7 Q Only the significant viewing aspect, is that
8 correct?

9 A That's correct, the significant viewing aspect
10 of the FCC rules are on a county-by-county basis.

11 Q But there are also rules which require a county-
12 by-county basis in the 35-mile zone, and 35-mile zones
13 don't stop at county borders, do they?

14 A They do not.

15 Q And also, in some cases, it requires carriage on
16 Grade B signal basis, is that correct?

17 A That's correct, too.

18 Q And it also requires carriage on a translator
19 basis. Did you take that into account?

20 A Yes, we did.

21 Q How does that appear in the description and
22 methodology?

23 A The determination of distant or local with
24 respect to each county was made by Ms. Marsha Kester, of
25 my staff; who was formerly chief examiner at the Copyright

1 Office of the Library of Congress. She is totally qualified,
2 in my opinion, to make judgments with respect to the distant
3 or local character of a county.

4 In addition to merely the county maps and the
5 contours of stations, she also took into account the
6 statements of accounts filed by cable systems, which in-
7 dicated whether the cable system considered the signal
8 distant or local. The general rule that was followed was
9 that a "must carry signal" was local; and that a "may carry
10 signal" was distant.

11 Q I don't agree with the general principle you have
12 stated, Mr. Cooper, that a "must carry" is local, and a
13 "may carry" is distant. Did Ms. Kester ever work at the
14 FCC?

15 A She did not.

16 Q She never worked in their cable bureau, or
17 presently in the cable branch of the mass media bureau
18 analyzing these things for the FCC, did she?

19 A Analyzing what for the FCC?

20 Q Distant signal carriage?

21 A I am not even aware that the FCC staff is involved
22 with making determinations of local or distant signal
23 carriage on a regular basis.

24 Q You are not aware that the FCC makes decisions
25 on a daily basis, as to whether or not a signal is a "must

1 carry" or a "may carry"?

2 A No, sir.

3 Q You are not aware that special relief petitions
4 are filed by cable systems seeking to be relieved from
5 their "must carry" obligations, are arguing that there is
6 a close question as to whether carriage on a "must carry"
7 basis?

8 A I am aware that such special petitions are sub-
9 mitted by cable systems, but I hardly think that that
10 constitutes FCC staff determination of these on a daily
11 basis.

12 Q Do you realize that there is a backlog of
13 literally hundreds of these petitions, and that they have
14 a special staff devoted to analyzing these questions?

15 A Do I realize that? No, I am not aware of it,
16 Mr. Harrington.

17 Q And are you aware that in the past the Commission
18 required what were called Certificates of Compliance from
19 cable operators?

20 A But that was rescinded a long time ago.

21 Q But in making those decisions they analyzed every
22 Certificate of Compliance request, to see if they were
23 appropriately carrying all the "must carries" and whether
24 the "may carries" they had listed met the Commission's
25 criteria, is that correct?

1 A I would hope that that was the FCC requirement
2 that they did so.

3 Q Does the Copyright Office of the Library of
4 Congress, is it charged with individually analyzing whether
5 a particular cable system which lists a particular signal
6 is either distant, or not distant is correct?

7 A Yes, sir, I believe that that is part of their
8 ongoing daily operation, in terms of examining the state-
9 ments of account filed by cable systems.

10 Q So, you are telling me that the Copyright Office
11 reviews every, or a substantial number of these, to see
12 whether the cable system is accurately self-identified
13 distant signal carriage?

14 A I am certain that they do so with extreme care,
15 in connection with the statements of accounts filed by
16 Form 3 cable systems, since the copyright payment only
17 of Form 3 cable systems is determined on the basis of the
18 distant or local signal carriage.

19 Q Mr. Cooper, doesn't it strike you as passing
20 curious that I have seen dozens, and hundreds of these
21 forms filed by various clients of our firm, and never
22 gotten a single inquiry from the Copyright Office as to
23 whether we had properly identified a signal as distant or
24 local?

25 A I think it is a credit to your organization and

1 your care in supplying the data, which is also rather un-
2 usual.

3 Q So, again, let's go back to these geographic
4 definitions on page A-7. As it says, MPAA made the
5 definition, it wasn't Nielsen that made the definitions,
6 was it?

7 A If it says MPAA made the definitions, then why
8 do you ask if Nielsen made them?

9 Q I just want to make it clear for the members of
10 the Tribunal, who have a busy schedule and can't necessarily
11 read through every line of every exhibit, Mr. Cooper.

12 A I think if it says that MPAA made the decision,
13 then MPAA made the decision, and Nielsen did not make it.

14 Q Do cable systems self-identify on their Form 3s
15 and Form 2s, and Form 1s, what stations they consider to
16 be distant signals?

17 A They do.

18 Q Why didn't you use those definitions in deciding
19 whether or not -- in your sampling, instead of a county-
20 by-county basis of your own concoction?

21 A It is quite simple, Mr. Harrington, the Nielsen
22 data are only available and can be tabulated on a county
23 basis.

24 Q So, if you had a situation where a county, under
25 FCC rules, some of the systems in the county carried a

1 distant signal basis, some carried on a local basis, and
2 you made the decision that it should be -- the entire county
3 should be treated as distant, you would have given credit
4 on all of those systems where it was local, is that correct?

5 A That is absolutely correct.

6 Q And similarly, if the opposite situation had
7 occurred and your group made the decision that it should be
8 treated as a local station, no one would have gotten credit
9 for the viewing on those cable systems that were distant,
10 is that right?

11 A I can imagine that that is also correct. The
12 number of cable systems in any county is not very substantial.
13 I think that the possibilities of making this kind of a
14 case that you are saying of the number of cable systems in
15 one county being treated differently than other systems in
16 the same county is very remote.

17 Q Did I hear you say that the number of systems in
18 the county is not very substantial?

19 A That is exactly what I said.

20 Q What is the most in a county, Mr. Cooper?

21 A Of Form 3 systems?

22 Q Yes.

23 A Probably one or two.

24 Q And you are telling me the most is one or two?

25 A Of Form 3 cable systems, yes; one or two.

1 Q Including Los Angeles County?

2 A Ha-ha-ha. No, I think that you can find an
3 exception, Mr. Harrington.

4 Q There are a lot of exceptions, aren't there, Mr.
5 Cooper?

6 A No, there are not a lot of exceptions, Mr.
7 Harrington.

8 Q What is the basis of your testimony? Have you
9 done a study to determine how many there are, or is that
10 just a guesstimate of yours?

11 A Sir, I have gone through the statements of
12 accounts now, since 1978; I have gone through the Cable
13 Fact Book; I have gone through the Cable Data File; I
14 have gone through Broadcasting Yearbook, and I can make
15 the statement with absolute certainty.

16 Q Except for Los Angeles?

17 A I will give you, there may be other exceptions,
18 too. But I think that anyone realizes that Los Angeles,
19 and Los Angeles County is a rather exceptional situation.

20 Q What about San Bernadino County?

21 A What about San Bernadino County?

22 Q Is there only one Form 3 system in San Bernadino
23 County?

24 A I have said, Mr. Harrington, that there are
25 counties where there may be one or two, I doubt very much

1 if there are many more than that.

2 Q One or two, okay.

3 A That's exactly what I said.

4 Q Does your study --

5 A New York County, I know, for example, that there
6 are two Form 3 systems, you have the large Teleprompter
7 system and you have the large system owned by ATC, but I
8 am certainly not going to make an exception and consider
9 New York and Los Angeles to be the rule.

10 Q Mr. Cooper, once again, I must ask you, if I
11 ask you a question to be answered yes, or no, answer it
12 yes or no. And if I ask you a question answer it, don't
13 volunteer. You have counsel here to do that on redirect.

14 We all play by the same rules, Mr. Cooper.

15 Now, the Nielsen Study was based on four reporting
16 periods, am I correct?

17 A Yes, sir.

18 Q What was the length of each of those reporting
19 periods?

20 A Four weeks.

21 Q So, 16 weeks out of 52 weeks in the year, am I
22 correct?

23 A That's correct.

24 Q Are these rating periods known to stations in
25 advance?

1 A Yes.

2 Q They are routinely the same, roughly the same
3 periods each year?

4 A Roughly the same period each year.

5 Q So, is it not a fact, Mr. Cooper, based on your
6 long experienced in the television industry, that tele-
7 vision stations tend to promote their highest viewed pro-
8 grams, most during rating periods, and also, to schedule
9 their highest rated movies during rating periods?

10 A I think that is true of all stations, yes.

11 Q And your study excludes programs that were broad-
12 cast before 6:00 a.m., am I correct, on weekdays?

13 A Before 6:00 a.m. on weekdays, and before 7:00 a.m.
14 on weekends.

15 Q And after 2:00 a.m.?

16 A And after 2:00 a.m.

17 Q And those are hours, typically, when movies are
18 broadcast by television stations, predominately, is that
19 not correct?

20 A That is generally the hours when stations are
21 dark.

22 Q Are there not television stations that broadcast
23 24-hours a day?

24 A Yes, there are a few.

25 Q A few. Do you know how many?

1 A I would dare say that I mentioned previously
2 there were 1600 television stations in operation in the
3 United States, that the number on a 24-hour basis is less
4 than 100.

5 Q And how many broadcast past 2:00 a.m. on weekends?

6 A Pardon me?

7 Q Past 2:00 a.m. on weekends, how many broadcast
8 past 2:00 a.m. on weekends?

9 A On weekends?

10 Q Saturday and Sunday.

11 A I think the number would not be substantially
12 larger than 100, that I had mentioned earlier.

13 Q You don't watch WTTG or WDCA past 2:00 a.m. on
14 weekends?

15 A No.

16 Q And these stations that you conceive are some of,
17 but you doubt there are very many, they broadcast mostly
18 movies in those hours, is that correct?

19 A Yes, I would say that movies are the most common
20 form of programming late night.

21 Q And late night hours would have very low average
22 viewing levels, am I correct, you would expect?

23 A Yes, I know that they would have very low viewing
24 levels.

25 Q So , by leaving out the information regarding

1 late night carriage of TV stations, you have decreased the
2 presence in the survey of low rated movies, am I correct?

3 A Well, by not having access to data for time after
4 2:00 a.m., or before 6:00 a.m. we have reduced the percent-
5 age of both the programming and the viewing that could be
6 attributed to our program supplier category. And this has
7 benefitted the claimants in other categories. We have
8 done this -- in effect, it is harmful to us, because
9 Nielsen does not count the viewing after 2:00 a.m., but I
10 think that it is so insignificant that I don't feel that
11 this loss is of any great consequence.

12 Q The average number of viewers at any one time
13 would go up by excluding those hours, am I right?

14 A Pardon me?

15 Q The average households viewing a particular
16 category of programming would go up, if you excluded that,
17 am I correct?

18 A Oh, yes. If I was to include them, the average
19 for all movies would go down.

20 Q And Nielsen doesn't rate programming after 2:00
21 a.m., is that the reason it was excluded?

22 A The Nielsen Station Index does not.

23 Q And why doesn't it do that, is it because the
24 ratings are so low?

25 A No, it is because it would be rather an imposition

1 -- I think both reasons; one it would be an imposition to
2 expect people to fill diaries in at 2:00 a.m. or 3:00 a.m.
3 in the morning, and the second is that fact that there is
4 so little viewing going on, it is -- again, it is a matter
5 of cost effectiveness of picking up those data.

6 Q Mr. Cooper, would you turn to page A-33 of this
7 excerpt that I handed you?

8 A (Perusing document)

9 Q It is titled Program Classification. And am I
10 correct that Nielsen classified programs according to
11 certain categories, MPAA classified the programs according
12 to certain categories, where you disagreed, you got together
13 and tried to add something else, is that right?

14 A And in all instances, Nielsen made the final
15 decision.

16 Q I call your attention to the entry Syndicated
17 Series, 2SS, it says "Programs available for distribution
18 to multiple stations for broadcast, except devotional
19 series, period, open parenthesis, see devotional series,
20 closed parenthesis". Is that what it says, Mr. Cooper?

21 A That's what it says.

22 Q Can you show me anywhere in the entire volume --
23 five volume set where it defines, or says anything else
24 about devotional series?

25 A No, we provided Nielsen, and we provide Nielsen

1 each year with a separate document which describes the
2 programming classifications and programming categorization
3 segments. I think this is what Nielsen is referring to.

4 Q So, even though it seems to imply there is a
5 section in here that deals with devotional programming,
6 the definition of devotional series is not in here at all?

7 A It is not in there.

8 MR. LANE: I would like to correct that, it is
9 in the four volumes that you got. It is clearly identified
10 in those four volumes, is it not, Mr. Cooper?

11 MR. HARRINGTON: Perhaps Mr. Lane can call my
12 attention to it in the four volumes.

13 THE WITNESS: The definition of devotional series
14 is not included.

15 BY MR. HARRINGTON:

16 Q In fact, there is no mention of devotional in
17 here at all, that I can find, Mr. Cooper. Perhaps, you
18 can call my attention to the words?

19 A I cannot call your attention to the words, but
20 I think they would have an acronym DS that you might assume
21 that that meant Devotional Series.

22 Q Oh, I am supposed to assume that?

23 A I would be very glad to advise you of that, on
24 request.

25 Q Now, turning to page A-35, Mr. Cooper, as I

1 read that it indicates that metered data were excluded
2 from the study, is that correct?

3 A That's what it says.

4 Q And it says even in cases where NSI apparently
5 had -- Nielsen apparently has adjusted in the past diary
6 reports for metering results, it hasn't done so in this
7 case?

8 A That's correct.

9 Q Is metering a more accurate sampling of viewing?

10 A Not necessarily.

11 Q Not necessarily. Why is that the case, Mr. Cooper?

12 A The main reason it is not the case is because
13 metering merely is a record of the fact that a set was on,
14 and tuned to a particular station. It does not directly
15 reflect any viewing.

16 Q I call your attention to page A-38 and A-39,
17 titled Limitations. What does that purport to be, Mr.
18 Cooper? What does Limitations mean?

19 A I think this is the kind of thing that any
20 responsible research organization would insist upon putting
21 into a report to indicate what cautions anyone using the
22 report should take in using it, and that is the purpose of
23 the Limitations statement by Nielsen. Every good -- every
24 reliable research report should contain such a statement.

25 Q So, it says it is subject to sampling error, am

1 I right?

2 A Yes, sir.

3 Q It also says it is subject to non-sampling
4 errors?

5 A Yes, sir.

6 Q That sounds like it is subject to every kind of
7 error, is that right, Mr. Cooper?

8 A I think that any study made by any party, whether
9 it is the U.S. Census Bureau, or the Nielsen Company, or
10 ELRA Research, is subject to sampling error, and to non-
11 sampling error.

12 Q And Nielsen Company has disclaimed the program
13 classifications, that have been used by MPAA, am I correct?

14 A They have not disclaimed them at all, all that
15 they have indicated is that these are definitions that
16 were provided by the MPAA and they are not traditionally
17 used by Nielsen.

18 Q It also says that some programs may have been
19 misclassified, am I correct?

20 A Oh, certainly it does say that, because it is
21 a good possibility. I have difficulty classifying programs
22 all the time. I recently, in an exhibit that we have
23 presented here, in connection with Devotionals, I came
24 across a programs, I believe it is on KXTX called Mickey
25 McGuire. I classified it in this exhibit as devotional,

1 but I really don't know whether that program is devotional,
2 or whether it is a Mickey Mouse Show, or Little Rascals,
3 or what have you.

4 Q But you are aware that the Devotional Claimants
5 include claims for programming that is not classified
6 even by you as devotional, is that correct? You are aware
7 that we are claiming for Another Life and for USA, and
8 you didn't classify those as devotional, did you?

9 A No, we did not.

10 Q They are classified as syndicated series?

11 A Yes, sir.

12 Q And they are included in your claim, in Phase I
13 or in our claim for Phase I?

14 A We are not including them as a claimants program
15 in our claim in Phase I or Phase II.

16 Q But in whatever --

17 A Our claim in Phase I has been negotiated on a
18 settling basis outside of this Tribunal's intention.

19 Q So, you haven't used this as the basis for the
20 settlement?

21 A We have not.

22 Q In fact, all members of your own group don't
23 vouch for the Nielsen Special Report, do they?

24 A They don't have to.

25 Q But they don't, do they?

1 A They do not.

2 Q It is MPAA's study, really; they are the major
3 sponsor of this study?

4 A No, I think it would be fairer to say that the
5 study is sponsored by the 72 claimants that we are repre-
6 senting in the program supplier category.

7 Q Of which we have, generally, called the MPAA
8 group, am I right?

9 A You may call it anything you want, but I call
10 it the MPAA represented group.

11 Q That's fine, the MPAA represented group. But it
12 doesn't include sports, for example?

13 A It doesn't include the category of sports. The
14 MPAA represented group includes sports organizations.

15 Q The category, separate claimant category of
16 sports, in fact, has criticized the Nielsen Study in the
17 past, has it not?

18 A I think that as an adversary, they have a right
19 to do so.

20 Q But now they have totally changed their mind?

21 A They have not changed their mind, they have not
22 agreed to the utilization of these data in the 1982 pro-
23 ceeding.

24 Q They didn't agree to the utilization of this
25 data?

1 A This is the reason that it was not submitted
2 into the 1982 proceeding.

3 Q But you put information in regarding Devotional
4 Claimants based on this?

5 A Yes, and this was done with the acquiescence of
6 all of the Settling Parties.

7 Q So, sports doesn't think it has any meaning to
8 themselves, but it thinks it has a lot of meaning to the
9 Devotional Claimants?

10 A You may make that assumption.

11 Q From the Limitations section, Mr. Cooper, I
12 understand it excludes viewing during the Thanksgiving
13 rating period?

14 A One day, the morning of Thanksgiving Day.

15 Q I may have misread it, but I thought it said
16 Thursday and Friday?

17 A No, I thought it was only the morning of Thanks-
18 giving Day.

19 Q Well, I will read to you, Thursday and Friday,
20 November 25 and 26.

21 A But does it also -- may I read that with you, too,
22 please?

23 Q (Handing) Please. A-39.

24 A I think that what it says is they have excluded
25 6:00 a.m. to 3:30 p.m. in the Central Time Zone, Mountain

1 Time Zone and Pacific Time Zone markets; 6:00 a.m. to 4:30
2 p.m. in the Eastern Time Zone markets on those days. It
3 would not be correct to characterize that they have ex-
4 cluded those two days from the study.

5 Q I agree, they have not excluded the evening hours,
6 after 3:30 Central, Mountain and Pacific; and after 4:30
7 Eastern.

8 A Yes, sir.

9 Q Mr. Cooper, I call your attention back to the
10 exhibits that you have placed in evidence, and specifically,
11 the last page of Exhibit 1, and Exhibit No. 5.

12 A (Perusing documents)

13 Q Can you show me anywhere in this volume, or
14 these other volumes where those numbers appear?

15 A These numbers -- the numbers for 1982 --

16 Q I am only interested in '82. Obviously, I don't
17 have the --

18 A The numbers for 1982, may be calculated directly
19 from the four volumes in front of you, sir.

20 Q But they weren't computed by Nielsen, they were
21 computed by you, personally?

22 A I have testified that our data that we use are
23 based upon computer tapes furnished to us by Nielsen, and
24 our analysis is based upon the computer tapes, data from
25 the computer tapes.

1 Q Particularly, looking to Exhibit No. 5, Mr. Cooper,
2 what particular devotional programs were included by you
3 in your computer run?

4 A Every program that is listed in those four volumes
5 under the code 3-DS has been counted as devotional program-
6 ming.

7 Q It does not include Another Life?

8 A It does not include Another Life.

9 Q It does not include USAM?

10 A It does not -- neither of those was classified
11 as 3-DS.

12 Q And it would not have included any other program-
13 ming that you, or Nielsen did not agreed -- or that Nielsen
14 did not ultimately classify as a devotional series, even
15 though the copyright might have been owned by one of the
16 so-called Devotional Claimants?

17 A That's correct, it includes only all of the
18 programs that were coded 3-DS in the four volumes that you
19 have.

20 Q Mr. Cooper, the numbers you have given there are
21 viewing, am I correct? One set of numbers is for, quote,
22 viewing, unquote?

23 A That is the percentage of the total distant
24 signal viewership in cable households.

25 Q Let's go back, I asked you a question specifically.

1 One of the categories listed there is viewing, in quotes,
2 am I correct?

3 A It is viewing.

4 Q Is not viewing a test of time, as well as
5 popularity?

6 A It is a combination of time and the desire on
7 the part of cable subscribers to view programs.

8 Q But it does include time?

9 A Yes, time is certainly a factor.

10 Q And if one simply looked at -- wanted to look at
11 popularity, for example, apart from time, one might look
12 at the figures that you undoubtedly have computed for the
13 average number of viewing households looking at a particular
14 category of programming in your sample? Would that be a
15 fair way to do it?

16 A Well, I haven't made such a calculation. You
17 are suggesting that we should -- those are presented for
18 our programs versus all programs in this --

19 Q I understand there is no number here given to
20 devotional programming?

21 A No, there isn't any.

22 Q But if one compares viewing average households
23 in thousands for the full four cycles during 1982, excluding
24 KMEX and WNJU, which are Hispanic stations, I see 17,000
25 average households for syndicated series and non-network

1 movies, and 10,000 average number of households for other
2 categories of programming, which includes, I presume, sports
3 and devotional programming, and others?

4 A And local programming.

5 Q And local programming, as well. The ratio there
6 is 63-to-37 -- I have computed that. Would you disagree
7 that that is a rough number?

8 A I would say it is an adequate number.

9 Q Now, the diaries that were used in this particular
10 study, were they specifically put out to measure distant
11 cable viewing?

12 A No, they were the standard NSI diaries used to
13 prepare their reports for broadcast stations.

14 Q So, Nielsen did not design a representative
15 sample of distant signal viewers, it is simply whatever
16 serendipitous viewing patterns should arise, am I correct?

17 A There is nothing serendipitous about it, the
18 sample that they selected is representative of all U.S.
19 television households, based upon the households -- the
20 combination of the sampled households in every market area
21 in the United States, every county in the United States
22 was included in this sample.

23 Q Was the sample specifically designed to insure
24 that a proportionate share of diaries went to viewers on
25 each of the cable systems involved?

1 A Each of the cable systems? Of course not.

2 Q It was not?

3 A It was merely designed to insure a representative-
4 ness of all US television households.

5 Q Including, and primarily over-the-air viewed?

6 A No, not at all. Whatever those households, it
7 would provide a representativeness, not only of broadcast
8 audiences, but also of cable audiences.

9 Q Including local cable audiences and distant
10 cable audiences?

11 A Absolutely.

12 Q So, the sampling of viewers was not developed in
13 such a way to insure an accurate random sampling of distant
14 cable viewing, am I correct? It was not specifically
15 designed for that?

16 A Oh, certainly, you asked if it was specifically
17 designed -- the question was whether it was specifically
18 designed to measure distant cable viewing, and the answer
19 is no.

20 Q Just one final line of questioning. I call your
21 attention -- and this was not copied for the Tribunal,
22 because of its length -- to the listing of the stations
23 that were included in the sample that begins on page A-8
24 of Volume 1. And just roughly going through it, it
25 includes Atlanta, some stations in Atlanta, not all stations;

1 Baltimore; Boston; Buffalo; one station in Cincinnati; one
2 station in Charlotte; several stations in Chicago; one in
3 Cleveland; several in Dallas-Fort Worth. Am I correct in
4 saying that most of these are major urban center stations?
5 In fact, virtually all are urban center stations, is that
6 correct?

7 A Most of the stations originate in the Top 50
8 markets.

9 Q And there isn't a single station in your list,
10 for example, that is licensed to a city in Louisiana, is
11 there?

12 A (Perusing document) I don't know if New Orleans
13 is, or is not included; it has been included in previous
14 studies. It is probably not in this one, if you make that
15 statement.

16 Q It certainly doesn't include stations in Baton
17 Rouge, or Shreveport, or Lafayette, or Alexandria, or Lake
18 Charles, does it?

19 A I am quite certain it does not.

20 Q And it doesn't include a single station in North
21 Dakota, or South Dakota, or Montana, does it?

22 A No, sir.

23 Q Even though those areas have very significant
24 distant signal viewing, don't they, because they are wide
25 open spaces?

1 A But not of those stations that originate in
2 those states.

3 Q Are you telling me that the stations licensed
4 to Minot, North Dakota don't get wide distribution through-
5 out eastern Montana and western North Dakota, on the distant
6 signal basis?

7 A It is the total population of those areas that
8 is relatively insignificant and would fail to meet any
9 kind of a standard that is based upon the total number of
10 subscribers.

11 Q And, in fact, the stations that were picked for
12 this sample include very few southern stations, it includes
13 a couple in Atlanta -- a few in Atlanta, it doesn't include
14 any in the smaller cities in the south, does it?

15 A We did not pick -- we picked the stations --

16 Q Mr. Cooper, I asked you a question, please answer
17 it.

18 Q I am trying to answer your question, Mr.
19 Harrington. If you don't let me answer your question, we
20 can just discontinue -- I am fed up with that. You asked
21 me a question, I want to answer it. You don't let me do
22 it.

23 Q I asked you a question which can be answered
24 yes or no, answer it yes or no.

25 A I won't answer it yes, or no.

1 MR. HARRINGTON: Mr. Chairman, I ask that you
2 instruct the witness to either answer the question, or
3 have the entire study stricken from the record and all
4 evidence based on the study.

5 CHAIRMAN BRENNAN: Mr. Cooper, when counsel asks
6 you a question that permits a yes or no answer, please
7 give a yes or no answer.

8 THE WITNESS: I shall, Mr. Chairman.

9 BY MR. HARRINGTON:

10 Q Did it include southern cities, other than, for
11 example, Atlanta?

12 A You prefaced your question previously, Mr.
13 Harrington -- if you will repeat your question, I will
14 answer it.

15 Q I will withdraw the question. I will ask it
16 again. Does it include cities other than Atlanta, and I
17 think one station in Charlotte in the south?

18 A The sample -- the stations that were included in
19 the study are listed in the report accurately.

20 MR. HARRINGTON: Mr. Chairman, I do not have a
21 copy of that. I would like to make a copy of the
22 particular listing and submit it tomorrow for the record.
23 And if counsel has any questions of the accuracy, of course,
24 I would be willing --

25 CHAIRMAN BRENNAN: I would prefer you submit it

1 on Monday.

2 MR. HARRINGTON: Thank you very much for pointing
3 that out.

4 BY MR. HARRINGTON:

5 Q You testified a moment ago, I believe, that it
6 is primarily based on Top 50 market stations?

7 A I said that the sample consisted primarily of
8 stations that originate in the Top 50 markets.

9 Q Your testimony, I think, is that it was not
10 specifically designed to get that result, am I correct?

11 A Do you want a yes, or no answer, or can I go
12 beyond that?

13 Q Please.

14 A The answer is yes, it was not so designed, it
15 was designed to pick any station, the subscriber selected
16 the station, the cable system selected the stations, we
17 did not.

18 Q So that areas like the Dakotas, and I noticed
19 there were none in Kansas, none in Nebraska -- you can
20 take my word on that, and we will know when the exhibit
21 gets placed in the record. All those rural areas are
22 effectively under-represented in the sampling, is that
23 not true?

24 A Not true.

25 Q How is that?

1 A Because all of the cable homes throughout the
2 United States, whether in urban areas, or in rural areas,
3 are represented in the study.

4 Q But the programming is not represented; so, for
5 example -- and I may be wrong on this -- if a program like
6 Green Acres may have more appeal in rural areas, than in
7 major market stations, it might be under-represented in
8 the viewing statistics, is that not correct?

9 A If Green Acres is not carried by any of the
10 stations that constituted the sample, it would be under-
11 reported.

12 Q Now, let's say it was carried by one station in
13 each market in the Dakotas, and each market in Louisiana,
14 and each market in Nebraska, and each market in Kansas
15 and received significant viewing while it was on those
16 stations, yet none of that viewing would show up, and it
17 was all on a distant signal basis, none of that viewing
18 would show up in your study at all, would it?

19 A It wouldn't be very much viewing.

20 Q That is your assumption?

21 A Absolutely.

22 Q So there is an urban bias here, isn't there,
23 Mr. Cooper? Let's be honest about it, this measures the
24 big city cable systems, doesn't it, primarily?

25 A No, sir.

1 Q That's why you have excluded stations carried by
2 cable systems with less than 300,000 subs, even though
3 they may have been carried by five or 10 distant signal
4 Form 3 cable systems?

5 A First, the number was not 300,000 it was 200,000.

6 Q 200,000.

7 A Secondly, there is no urban bias. I think that
8 is what I am trying to get at, you are suggesting there
9 is an urban bias in connection with the data that we have
10 collected. The data we have collected is for all cable
11 systems, all in the United States, whether they are located
12 in urban areas, or in rural areas.

13 Q But it is based on stations that are urban area
14 stations, is that not correct.

15 MR. HARRINGTON: No further questions.

16 CHAIRMAN BRENNAN: Are there any questions by
17 Commissioners at this point?

18 (No response)

19 MR. LUTZKER: I have some.

20 CHAIRMAN BRENNAN: Mr. Lutzker, am I mistaken
21 in my recollection that in a colloquy with Mr. Scheiner
22 you indicated that your further role in these proceedings
23 would be limited to the submission of your proposed find-
24 ings?

25 MR. LUTZKER: That's right.

1 CHAIRMAN BRENNAN: And you have changed your
2 position since our last session?

3 MR. LUTZKER: I haven't changed my position. We
4 have indicated participation in the Phase I proceeding.

5 CHAIRMAN BRENNAN: I am aware of that, but I
6 understood that counsel for Multi-Media had indicated to
7 counsel for the Settling Parties that you would not take
8 any further role in this matter, other than the preparation
9 of your proposed findings. I assume that you now wish to
10 address some questions to the witness?

11 MR. LUTZKER: I have one or two questions, based
12 upon the information that was provided to the Devotional
13 Claimants' counsel after the close of Phase II.

14 CHAIRMAN BRENNAN: We will take our recess at
15 this point.

16 (Whereupon, a short recess was taken.)

17 CHAIRMAN BRENNAN: The hearing will resume.

18 The Tribunal believes that counsel for Multi-
19 Media made a commitment to counsel for the Settling Parties,
20 and the Tribunal, as part of its policy to encourage
21 voluntary agreements, will not recognize Mr. Lutzker at
22 this time.

23 Mr. Harrington.

24 MR. HARRINGTON: Before Mr. Lane begins his
25 redirect, I believe through an oversight I failed to offer

1 the exhibit which was identified as Devotional Claimants'
2 Exhibit 24, and I will now offer it into evidence.

3 CHAIRMAN BRENNAN: It will be received into
4 evidence.

5 (Whereupon, Devotional Claimants'
6 Exhibit No. 24 was received in evidence)

7 CHAIRMAN BRENNAN: Mr. Lane.

8 REDIRECT EXAMINATION

9 BY MR. LANE:

10 Q Mr. Cooper, would you refer to page A-6 of
11 Devotional Exhibit 24, please?

12 A (Perusing document) Yes, sir.

13 Q Referring particularly to A-1-C, the number of
14 full-time distant cable subscribers. Would you explain
15 exactly the difference between the 200,000 number that
16 appears there and the 100,000 number?

17 A The reason for the double criteria that we used
18 in 1982, relates to the impact of the rescission of the
19 of the FCC rules. There was some possibility that cable
20 systems' behavior, in terms of the carriage of distant
21 signals would be substantially different during the second
22 half of 1982, than it was during the first half of 1982,
23 or that a figure that is based upon the combined combin-
24 ation of '82 first accounting period and second accounting
25 period could be misleading. So, we used the two criteria.

1 What this means is that the cable system would
2 have been carried by Form 3 systems on a full-time basis
3 by at least 100,000 subscribers during the first accounting
4 period, and during the second accounting period. We would
5 not want to include cable systems that had dropped distant
6 signals during the second accounting period.

7 Q So that in essence for any accounting period,
8 the cut-off is really 100,000?

9 A If it were 100,000 both periods would be included.

10 Q Mr. Cooper, do you have any knowledge of the
11 total amount of the royalty pool in a given year, how much
12 of that pool comes from Form 1 and Form 2 systems?

13 A Yes, sir, less than 10 percent.

14 Q Do you have any knowledge of the number of total
15 subscribers of cable systems that receive as distant
16 signals STV, and not commercial stations?

17 A In aggregate?

18 Q Yes, or if you can break it out.

19 A No, what I will say is -- I don't know an
20 aggregate figure. Among the Top 100 stations with respect
21 to carriage as a full-time distant signal by cable systems,
22 there are educational stations, there are Canadian stations,
23 and there are one or two stations which also have STV
24 operations.

25 Q Have you ever seen Copyright Office challenge to

1 to the statements of accounts of Form 3 cable systems.
2 based on whether they correctly characterized signals as
3 distant or local?

4 A I have seen myriads of them, sir.

5 Q A point that I want to emphasize concerns whether
6 the Nielsen Study covers cable subscribers in North and
7 South Dakota, and Kansas and Nebraska, Idaho -- in fact,
8 in every state?

9 A In every state, including Alaska and Hawaii.

10 Q There was no exclusion from the Nielsen Study
11 of rural cable subscribers, or urban cable subscribers, or
12 any cable subscribers, was there?

13 A All cable subscribers, wherever they were located
14 in the United States, were included.

15 Q And the fact that the cable subscribers in the
16 Dakotas, Kansas, Nebraska can receive WTBS, WGN, WPIX,
17 WOR via satellite, can they not?

18 A Yes, sir.

19 Q And in many areas on the East Coast, in particular,
20 there are also microwave systems that carry signals to
21 rural areas, are there not?

22 A Yes, there are, sir.

23 Q And the subscribers who receive such signals by
24 satellite delivery, or microwave delivery are counted in
25 the Nielsen sample, are they not?

1 A They are all included.

2 Q And in addition, when you were selecting the
3 sample and the 100,000 subscribers, you did not exclude
4 cable subscribers in the Dakotas, Kansas and Nebraska,
5 did you?

6 A The data that were used for the sample selection
7 are identical to the ones I believe Mr. Harrington has on
8 his desk, and are a summary that contain the name of the
9 station, its location, its type, whether it is a network
10 affiliate, an independent, or Canadian station, and the
11 number of Form 3 cable systems carried on a full-time basis,
12 and the number of subscribers for the systems, and no
13 other information.

14 Q And you didn't exclude any rural cable systems
15 in that calculation, did you, Mr. Cooper?

16 A In the sample selection process?

17 Q Form 3?

18 A Oh, absolutely not.

19 Q Mr. Cooper, is it true that the methodology of
20 the Nielsen Study has been the same in the 1982 special
21 study as it was in prior years, other than the one change
22 we talked about, the fee generated and the differing
23 stations?

24 A There was one further improvement in the 1982
25 study versus the previous studies, for the 1982 study

1 Nielsen provided the time and viewing of programs that
2 occupied -- special programs that occupied spots in daytime
3 programs which were pre-empted for the special programs.
4 The 1982 study included separate data for the programs --
5 the special programs and makes an adjustment for the pro-
6 gram which was pre-empted, to make room for the special
7 program.

8 Q Other than that change, and the one that has
9 been previously identified by you, is the methodology
10 the same?

11 A Precisely the same.

12 MR. LANE: I have no further questions.

13 MR. HARRINGTON: Mr. Chairman, might I ask a
14 few questions on recross, based on the testimony?

15 CHAIRMAN BRENNAN: Mr. Harrington, you correctly
16 described Mr. Lane's contribution as redirect; redirect
17 concludes the examination of the witness.

18 Mr. Garrett, for what purpose are you seeking
19 recognition?

20 MR. GARRETT: I don't want to ask any questions.

21 CHAIRMAN BRENNAN: First, on behalf of the
22 Tribunal, thank you, Allen, for your many appearances in
23 this proceeding.

24 (Whereupon, the witness was excused.)

25 CHAIRMAN BRENNAN: Mr. Garrett.

1 MR. GARRETT: Mr. Chairman, Mr. Harrington asked
2 a number of questions of Mr. Cooper concerning the position
3 of the Joint Sports Claimants, with respect to the use of
4 Nielsen data, and other data in this proceeding by the
5 Settling Parties.

6 And so that there is no confusion in the record
7 on this point, I want to emphasize that all of the Settling
8 Parties have agreed to certain limitations on the use of
9 data in these proceedings. Those agreements are all fully
10 and completely set forth in the settlement agreement, a
11 copy of which has been made available to the Tribunal a
12 long time ago. Apart from that settlement agreement, and
13 as a matter of public record, there are no other restrictions
14 or understandings among the parties as to the utilization
15 of data in this proceeding.

16 CHAIRMAN BRENNAN: We turn now to the matter of
17 the PTL contract.

18 Whereupon,

19 WALTER RICHARDSON

20 was called as a witness and, having first been duly sworn,
21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. MIDLEN:

24 Q Mr. Richardson, would you state your name and
25 address for the record?

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1330 VERMONT AVENUE, NW
WASHINGTON, D.C. 20005

1 A Walter H. Richardson, from Fort Mills, South
2 Carolina.

3 Q And what is your occupation?

4 A I work for the PTL Television Network as Director
5 of Affiliate Marketing.

6 Q Are you the same Walter Richardson who appeared
7 before this Tribunal in 1982?

8 A Yes, I am.

9 Q Are you familiar with certain documents that I
10 have distributed, one of which is entitled Park Place
11 Advertising Agency, and the other is entitled PTL, the
12 Inspirational Network?

13 A Yes, sir.

14 Q Are those contracts that are used by PTL?

15 A That's right.

16 MR. MIDLEN: Mr. Chairman, Mr. Richardson is
17 here principally at the Tribunal's request. The documents
18 have been identified by him, although not formally on the
19 record. If they are to be introduced, I would ask that
20 they -- or suggest that they be marked as Tribunal Exhibit
21 No. 1 and Tribunal Exhibit No. 2. And you can admit them
22 as you see fit.

23 And he is available for examination by the
24 Tribunal and any other party.

25 (Whereupon, the documents were marked
for identification as Tribunal 1 & 2)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1330 VERMONT AVENUE, NW

WASHINGTON, D.C. 20005

1 CHAIRMAN BRENNAN: Any questions by the Commission-
2 ers at this point?

3 (No response)

4 MR. LANE: Mr. Chairman, can we have a few minutes?

5 CHAIRMAN BRENNAN: Yes, Mr. Lane.

6 (Off the record)

7 MR. LANE: May we be informed which exhibit is
8 Tribunal 1 and which is Tribunal 2?

9 CHAIRMAN BRENNAN: I guess I get to make that
10 decision, don't I, since on my copy PTL Inspirational
11 Network appears first, it will be identified as Tribunal
12 Exhibit 1.

13 Did I do that right?

14 MR. MIDLEN: Has there ever been a Tribunal
15 exhibit before?

16 CHAIRMAN BRENNAN: Yes.

17 MS. FORD: It hasn't been admitted into evidence.

18 CHAIRMAN BRENNAN: Off the record.

19 (Discussion off the record)

20 MR. LANE: Are the two exhibits contracts for
21 the same type of carriage of PTL programming?

22 THE WITNESS: Exhibit No. 1 is the blanket
23 authorization to receive the signal that we distribute, via
24 satellite.

25 MR. LANE: Do you have an entire satellite

1 network?

2 THE WITNESS: Twenty-four hours.

3 CROSS-EXAMINATION

4 BY MR. LANE:

5 Q And is this contract for the entire satellite
6 network?

7 A As it indicates below, it is for the entire 24-
8 hours, or any portion they are able to fit into their
9 schedule.

10 Q So, in other words, if I were a cable system,
11 or more particularly, if I were a television station and
12 I could receive something from a satellite, I could say
13 I did want to get the PTL Club program and nothing else
14 on your satellite service, and you would give this con-
15 tract?

16 A No, we don't do that with broadcast stations,
17 we only use this with cable, SMA-TV, MDS and there is a
18 market for TV. I don't think we are in the practice of
19 doing it LPTV, individual and others. So, I guess they
20 do send it out, but more importantly, it is designed for
21 cable systems and SMA-TV.

22 It is kind of a recordkeeping device.

23 Q Is Exhibit No. 2, is that the one that is designed
24 for broadcast stations?

25 A If compensation takes place. If you will note,

1 the months of the year are down in the corner, and that
2 is where we put out the monthly billing, if compensation
3 results.

4 Q Let me ask you this, if I am a cable system, and
5 I take the satellite network, would I get both pieces of
6 paper?

7 A Not necessarily.

8 Q If I were a cable system and I were compensated
9 to carry this satellite network, would I get both pieces
10 of paper?

11 A Correct.

12 Q And if I am a television station and I just take
13 the PTL Club program, I would just get Exhibit No. 2?

14 A More than likely that would probably be the
15 case.

16 Q Now, of the cable systems that take the PTL
17 service, how many take the full 24-hours a day service,
18 what percentage of all cable systems?

19 A We are going to say 90 percent, but of course,
20 that is subject to pre-emptions, and we are pretty much
21 at their discretion on what they take, or don't take.

22 Q Do any television stations receive -- how do the
23 television stations receive the PTL Club program, by the
24 satellite feed, or is it bicycled, or how does that take
25 place?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1330 VERMONT AVENUE, NW

WASHINGTON, D.C. 20005

1 A It is bicycled, by satellite, and some take it
2 off-air from other stations, but generally bicycled or via
3 satellite.

4 Q Do you provide any incentives to cable systems
5 to pick up the satellite network?

6 A Carte blanc, no.

7 Q I want to refer to the term side of Exhibit No. 2,
8 and particularly to paragraph number seven.

9 A (Perusing documents)

10 Q What is spot position within the meaning of this
11 contract?

12 A Promotional announcements, generic to the Jim
13 Bakker Program, often gift items, gift offers, things like
14 that, free books, free records.

15 Q Now, would you explain the relationship between
16 spot positions and the indication that the station shall
17 be responsible -- excuse me, I don't quite understand the
18 last sentence of that paragraph number seven, involving
19 16 minutes of Jim Bakker commercial time. Would you explain
20 what Jim Bakker commercial time is?

21 A It is my understanding that commercial time
22 should be limited to 16 minutes per hour, and even since
23 this was written, it might have been deregulated, and I
24 think that it has. That is what that is referring to.

25 Q And would this be commercial time of any kind of

1 commercials?

2 A It would be totally generic to Jim Bakker. In
3 other words, we put this in for, I guess, the most liberal
4 interpretation of the document. We do not sell commercial
5 time. We do not barter any spots. Anything we do within
6 the program, it is a totally sponsored program when we
7 syndicate it. And so, indeed, we might offer a Bible, or
8 cassette tape of the New Testament, and so we are referring
9 to the spot time as our gift offers, basically.

10 Q So, commercial time in spot positions would more
11 or less be the same definition?

12 A Right.

13 Q I would like to refer to paragraph number five,
14 is the additional time that is necessary to program a
15 telethon, or any programming subject to a separate negoti-
16 ation, beyond this one?

17 A Yes, sir.

18 Q What would be any other additional programming,
19 outside of the telethon?

20 A A prime time special, you know, hypothetically
21 a prime time special calling the nation to prayer, or
22 anything on devotional subject matter.

23 Q Is it fair to state that in each year, or whatever
24 the period is that you would try to negotiate time for a
25 telethon?

1 A No, we have, basically, gone away from the
2 special time telethon. When PTL began, and it is pretty
3 much the history of Christian television, there have been
4 telethons, often weekly telethons and things like that,
5 but we have pretty much gotten away from it, and don't do
6 that anymore. But in case we want to, you can tell, the
7 wording is so loose, it is basically station discretion,
8 subject to their time and availability. And we just quit
9 them.

10 Q Referring to paragraph three on this same page,
11 how do you determine what the compensation is for a
12 particular time period, and particularly, where it refers
13 to the reduction, if the program is carried in a different
14 time slot?

15 A Well, you know, of course we negotiate a contract,
16 generally, based on 52-weeks; Jim Bakker is a five day a
17 week program. So, we will negotiate the program going in,
18 and hypothetically, if it is \$100 an hour and 50 percent
19 of the program is missed due to technical difficulties,
20 then the charge for the program would only be \$50 for that
21 day.

22 So, it is negotiated on a market-by-market basis.
23 But, generally, it is a portion of the pro rata, if some
24 technical difficulty occurs.

25 Q Let me ask you this, it appears the last sentence

1 of paragraph three, that the station could move the time
2 of broadcast of any Jim Bakker program, is that possible?
3 In other words, do you agree that the program will be
4 carried X-hours each day, 52 days a year, and then could
5 the station unilaterally say "Well, we don't want to carry
6 it X-hours, we might carry it Y-hours, for half of the
7 year"?

8 A Well, generally, that doesn't occur, but if that
9 station has to -- we have to authorize any permanent move,
10 because it breaches the contract; if they run the program
11 at a time other than delivered, then theoretically and
12 actually, we don't have to pay for it.

13 Q Does paragraph one of this same page indicate
14 that only religious programming will adjoin Jim Bakker?

15 A No, that is to say that we are affected with
16 lead-ins and lead-outs just as any other programmers may
17 be, and so we are interested if a kids show might lead-in
18 to our program, because we aren't searching for the
19 childrens' demographics. So, no, we generally have
20 secular lead-ins on most broadcast stations; on our
21 satellite network we are a 24-hour inspirational.

22 Q Referring particularly to the words here, it
23 says, "The station will inform you of its intention to sell
24 time adjoining to Bakker, for other religious programming".
25 What is the purpose of that notification by the station?

1 A Well, you know, we buy time on over 300 com-
2 mercial television stations around the world, and com-
3 munication is sophisticated as it is, we often find our-
4 selves in the dark because the market can move so fast,
5 and if we wait for rating books, and things like that, it
6 could be way down the road before we find something out.

7 That clause is somewhat grandfathered in,
8 hypothetically if we were on at 10:00 p.m., and we had
9 been desirous over the years of being 9:00 p.m., and
10 suddenly 9:00 p.m. was being offered to another devotional
11 programmer, we would say we might have first option, or
12 we might have talked about that in the past.

13 Q Is there any exclusivity provisions here that
14 requires that another station -- that you would not sell
15 to another station in the same market?

16 A No, sir.

17 Q Returning to Exhibit 1, you indicated there are
18 no incentives to the cable systems to take PTL --

19 A Other than the quality of the programming itself,
20 and that type of thing, but no, it is offered across the
21 boards free of charge, and that is our longstanding position
22 in the marketplace.

23 MR. LANE: Those are all the questions that I
24 have.

25 CHAIRMAN BRENNAN: Thank you.

1 The Tribunal exhibits will be received into
2 evidence.

3 (Whereupon, Tribunal Exhibits 1 and 2
4 were received into evidence.)

5 CHAIRMAN BRENNAN: Thank you, sir, for your
6 appearance.

7 (Whereupon, the witness was excused.)

8 CHAIRMAN BRENNAN: This concludes the Phase I
9 cases. We will recess until 10:00 a.m., Monday in this
10 room.

11 (Whereupon, the hearing was adjourned at 11:55
12 a.m., to reconvene at 10:00 a.m., Monday, August 6, 1984.)

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of:

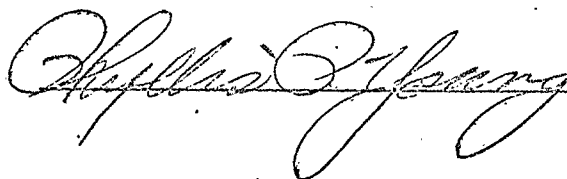
Cable Royalty Distribution
1982 - Phase I

Before: Copyright Royalty Tribunal
Thomas Brennan, Chairman

Date: August 3, 1984

Place: 2000 L Street, N.W.
Room 500
Washington, D.C.

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to type-
writing.



NEAL R. GROSS
1323 Rhode Island Ave.
Washington, D.C. 20005